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9 Official Committee of Unsecured Creditors

7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION

10 In re:

11 ANKA BEHAVIORAL HEALTH,
12 INCORPORATED,

13 Debtor.

Case No. 19-41025-WJL

Chapter 11

14 **STIPULATION BETWEEN THE**
15 **OFFICIAL COMMITTEE OF**
16 **UNSECURED CREDITORS AND THE**
17 **DEBTOR FOR LEAVE, STANDING,**
18 **AND AUTHORITY TO INVESTIGATE,**
19 **PURSUE, PROSECUTE, AND RESOLVE**
20 **CERTAIN ACTIONS ON BEHALF OF**
21 **THE ESTATE AND GRANTING**
22 **RELATED RELIEF**

Hon. William J. Lafferty, III

[No Hearing Required]

23 The Official Committee of Unsecured Creditors in the above captioned case, on behalf of
24 itself and any successor in interest (the "Committee"), and ANKA Behavioral Health, Incorporated
25 (the "Debtor"), debtor and debtor in possession in the above captioned case, hereby stipulate and
26 agree pursuant to 11 U.S.C. §§ 105, 1103(c)(5) and 1109(b) that: the Committee, including any
27 successor in interest to the Committee, shall have non-exclusive leave, standing, and authority to
28 investigate, pursue, file, commence, prosecute to judgment, settle or otherwise resolve any and all

1 claims or causes of action against any Target Party or any Target Parties (as those terms are defined
2 herein), including without limitation the Litigation Claims defined herein, as follows:

3 **RECITALS**

4 A. Whereas, on April 30, 2019 (the “Petition Date”), the Debtor filed a voluntary
5 petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*
6 (the “Bankruptcy Code”).

7 B. Whereas, the Debtor has continued to manage its affairs as debtor in-possession
8 pursuant to sections 1107(a) and 1108.

9 C. Whereas, on May 8, 2019, the Committee was duly appointed by the Office of the
10 United States Trustee pursuant to section 1102 of the Bankruptcy Code to represent the interests of
11 creditors holding unsecured claims in this case.

12 D. Whereas, pursuant to Bankruptcy Code section 1103(c), the Committee’s duties
13 include investigation of the acts, conduct, assets, liabilities, and financial condition of the Debtor and
14 any other matter relevant to the case or to the formulation of a plan.

15 E. Whereas, based on limited information that has been provided to the Committee to
16 date, the Committee believes that colorable claims and causes of action (the “Litigation Claims”)
17 may exist against, certain insiders of the Debtor, including the Debtor’s prepetition Officers
18 (collectively, the “Target Parties” and each, individually, a “Target Party”) relating to their
19 prepetition management of the Debtor.

20 F. Whereas, the policies of insurance covering the Debtor’s Directors and Officers
21 expires on or about June 30, 2019, and to invoke the policies, claims must be made prior to that date.

22 G. Whereas, the Debtor has agreed to consent to and authorize the Committee to pursue
23 the Litigation Claims on behalf of the Debtor’s estate as is set forth in this Stipulation.

24 H. Whereas, a Bankruptcy Court may confer standing on a creditors’ committee to
25 pursue estate claims, under the Bankruptcy Code.¹

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27 ¹ See *In re. Parmetex, Inc.*, 199 F.3d 1029, 1031 (9th Cir. 1999)(stating that a court could
28 grant derivative standing to a creditor’s committee when the trustee has stipulated to the committee’s
standing and the court has approved such stipulation).

1 I. Whereas, in order to avoid the need for costly litigation, the Committee and the
2 Debtor have reached agreement with respect to the Committee's non-exclusive authority to
3 investigate, settle, and pursue the Litigation Claims on the terms set forth in this Stipulation.

4 **STIPULATION**

5 **NOW, THEREFORE, IT IS HEREBY STIPULATED** and agreed to by and between the
6 Committee and the Debtor as follows:

7 1. The Recitals set forth above are hereby incorporated in full and made a part of this
8 Stipulation.

9 2. The Committee, and any successor in interest to the Committee, shall have non-
10 exclusive leave, standing, and authority to investigate, pursue, file, commence, prosecute to
11 judgment, settle or otherwise resolve any and all claims or causes of action otherwise owned by the
12 Debtor against any Target Party or any Target Parties, including without limitation the Litigation
13 Claims.

14 3. This Stipulation and the agreements set forth herein are made subject to Bankruptcy
15 Court approval.

16 4. This Stipulation and the agreements contained herein shall be binding on and shall
17 inure to the benefit of the parties hereto, and any successors in interest, assignees, trustees,
18 examiners, agents, and representatives.

19 5. Each party and/or counsel signing below warrants that he or she has full authority to
20 enter into this Stipulation on behalf of the party he purports to bind.

21 6. This Stipulation may be executed by facsimile or electronic signature in two or more
22 counterparts, each of which will be deemed to be an original, but all of which together shall
23 constitute one instrument. No term of this Stipulation may be waived, modified or amended except
24 in a writing approved by the Bankruptcy Court and signed by the party against whom enforcement of
25 the waiver, modification or amendment is sought.

26 7. The parties further stipulate that the Committee shall have relief from the automatic
27 stay, to the extent necessary, to do the things contemplated by this Stipulation.

28 [signatures on following page]

1 **ACCORDINGLY, IT IS SO STIPULATED AND AGREED:**

2 Executed this 26th day of June, 2019 at _____.

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**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR ANKA
BEHAVIORAL HEALTH
INCORPORATED**

By: Chris Evans
Chris Evans, Committee Chair

9 Executed this 25th day of June, 2019 at Pleasant Hill, California.

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**ANKA BEHAVIORAL HEALTH
INCORPORATED**

By: Chris Withrow
Chris Withrow, CEO

TRODELLA & LAPPING LLP
WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Richard A. Lapping
Richard A. Lapping
Attorneys for ANKA Behavioral
Health, Incorporated